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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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In re J.A. et al., Persons Coming Under the Juvenile  
Court Law.

C088225

SHASTA COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

(Super. Ct. No.  
16JVSQ3069101,  
16JVSQ3069201)

Plaintiff and Respondent,

v.

A.L.,

Defendant and Appellant.

A.L., mother of the minors, appeals from the juvenile court's orders denying her petitions for modification and terminating her parental rights. (Welf. & Inst. Code, §§ 388, 366.26, 395.)<sup>1</sup> She contends the juvenile court abused its discretion in denying her petitions for modification seeking return of minors J.A. and I.G. and erred in failing

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<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

to find the sibling relationship exception to adoption applied to I.G. (§ 366.26, subd. (c)(1)(B)(v).) We conclude mother did not meet her burden to show changed circumstances to modify the juvenile court's orders and, having failed to assert the sibling relationship exception in the juvenile court, she forfeited that issue on appeal. Accordingly, we affirm the juvenile court's orders.

## **I. BACKGROUND**

Mother has a lengthy Child Protective Services history, comprised of 19 referrals regarding her lack of supervision, physical abuse, and general neglect of the minors, dating back to 2004.<sup>2</sup> There were also several reports of mother hearing voices and seeing things that were not there.

On May 6, 2016, the Shasta County Health and Human Services Agency (the Agency) filed a section 300 petition on behalf of minors D.D. (then age 15), J.A. (then age 11), and I.G. (then age 3), after mother punched J.A. in the face and reportedly threw sticks at all three minors. The minors reported that mother hit them regularly. Mother was suffering from mental health issues and was not on mental health medications. The minors were detained and mother was provided with an interim case plan and services.

In the social worker's June 22, 2016, report, the social worker advised the juvenile court that on three separate occasions mother had mentioned her concerns over being harassed by " 'tech' " and an individual named Suzie Woodworth, along with other unnamed individuals. Mother was adamant in her belief that Suzie Woodworth was the person who hurt her children and she was setting mother up. Mother also stated that Suzie Woodworth and others traveled through " 'port holes,' " that the port holes are bad, and she feared that they may take her children into the port holes. Mother expressed her belief that each time she gave birth she delivered quadruplets and asked for assistance in

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<sup>2</sup> Several referrals were also made for domestic violence.

locating her missing “ ‘pods.’ ” Mother also expressed concern that D.D. may not be the real D.D. and that she fears the people who are harassing her have the real D.D. in a port hole.

Mother’s therapist reported mother believed she was being harassed through “ ‘tech’ ” and was dealing with mental warfare with Suzie Woodworth and “the Jenkerings.” Mother indicated that they were “bad people that do bad things” and that “ ‘they are the reason that all of this is happening.’ ” Mother struggled to remain on topic or to answer questions directly. The therapist recommended a mental health and medication evaluation, individual therapy, parenting classes, and a psychological evaluation to determine mother’s ability to benefit from services and make the lasting changes necessary to provide safe, effective, and protective parenting.

The jurisdiction/disposition hearing, which was continued for various reasons, took place on December 2, 2016. Mother had continued to repeat her concerns about Suzie Woodworth and “ ‘sound and tech’ ” setting her up, the need to investigate the “ ‘pod people,’ ” her allegations of “ ‘portal stalking,’ ” and her missing children and “ ‘pod babies.’ ” She denied, however, that she had any serious mental health symptoms and said she was not willing to take any medication. The juvenile court sustained the petition, declared the minors dependents of the court, and ordered them removed from mother’s custody. Mother was provided reunification services.

Mother’s case plan, with which she had previously been ordered and failed to comply, was comprised of psychotropic medication evaluation and compliance, individual counseling, and parenting education. The juvenile court also ordered mother to undergo a psychological evaluation.

Dr. McKellar, who performed mother’s mental health assessment, concluded mother “presented as a woman who is suffering from persistent and fixed delusions, paranoid ideation, auditory hallucinations, and expansive mood and extremely poor insight. [She] was only willing to provide general information about her past (i.e.

relationship in childhood history), and her reliability as a historian was undermined by the presence of psychotic reasoning.” He concluded she would not be able to safely visit the minors or benefit from services until she received proper psychiatric treatment. He also expressed concern that mother was so convinced that her delusions were real that she was highly resistant to treatment. Talk therapy and simply reasoning with her would be ineffective. He recommended she be evaluated for psychotropic medication by a psychiatrist, refrain from her ongoing marijuana use, and be reevaluated for reunification services after she was stable on psychotropic medication. Mother’s visitation with the minors was suspended.

After initially refusing medication, mother began taking the antipsychotic Risperdal in February 2017. Her dosage was increased the following month. On April 6, 2017, mother reported the medication keeps her calm but she still hears voices. She continued to be paranoid and believed she was being surveilled by the FBI. She reported high levels of anxiety and panic but maintained she does not have a psychiatric illness. Her medication was adjusted; the Risperdal was stopped and she was started on Latuda and Clonazepam. Mother moved to San Jose on April 24, 2017, and said she attempted to contact mental health services but felt they did not understand her needs. She ran out of medication at the beginning of July 2017.

On November 1, 2017, in preparation for the 18-month review hearing, the social worker filed a report stating mother was living at her father’s house and had been working for two weeks. Mother had begun mental health services with Santa Clara County Behavioral Health Services, or Santa Clara Valley Health and Hospital System (hereafter SCBH), and had attended two counseling sessions in September and one session in October. She had missed the other October counseling session. She had been prescribed Latuda as an antipsychotic and Buspar as an antianxiety medication on September 28, 2017, but her therapist stated it was too soon to assess her progress. The

juvenile court reinstated mother's visitation at the Agency's discretion, but terminated reunification services and set the section 366.26 hearing.

On April 27, 2018, a permanent plan of guardianship with the maternal grandmother was ordered for D.D. and J.A. The section 366.26 hearing for I.G. was continued, as he was being transitioned into a new adoptive home. On June 11, 2018, mother filed section 388 petitions for modification seeking return of J.A. and I.G. to her custody.

The hearing on mother's petitions for modification and the section 366.26 hearing took place on October 17, 2018. Mother testified she felt she was compliant with her mental health appointments and medication. Mother stated she had begun treatment at SCBH about four or five months earlier, and claimed she saw her therapist once a month and her psychiatrist in charge of medication once a month. Mother felt her stress had been much more manageable in the past year, to the point of being a totally different person. She had learned to remain calm and take her medication upon signs of anxiety. Mother stated that she was taken off Buspar at her last appointment, as it was not needed. She believed the Latuda was for anxiety and mood stabilization. She conceded that the prescription stated it was to be taken daily and that she tries to take it daily but tends to be forgetful and misses it as often as every other day. Mother claimed she no longer had the type of auditory hallucinations that she had before.<sup>3</sup>

The most recent report prepared by SCBH, dated March 9, 2018, reflected mother began treatment over a year earlier and had attended therapy appointments September 14, 2017, September 25, 2017, October 12, 2017, November 22, 2017, December 11, 2017,

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<sup>3</sup> Mother differentiated between auditory hallucinations from the "one[s] within [her]self," or hearing "pod people" or Suzie Woodworth, which she stated she had not had in over six months, and the ones that included testifying in court or speaking with the attorney, which she also characterized as hallucinations.

December 26, 2017, February 16, 2018, and March 9, 2018. Mother had attended medical appointments with her psychiatrist on September 28, 2017, November 22, 2017, and February 16, 2018. The social worker testified that SCBH had advised that mother's treatment plan required she attend therapy in the form of individual counseling at least two times a month and that, over the last year, mother had attended only 13 sessions. Mother had last attended scheduled therapy in August and had failed to show for her September appointment. SCBH was unable to ascertain whether mother was medication compliant as mother had failed to show for her October appointment with the psychiatrist in charge of her medication management.

The juvenile court found that, although mother was finally getting some mental health treatment, there had been no change in circumstances because she had not shown she was compliant with her medication, compliant with her appointment attendance, or mentally healthy. It further found that it would not be in the minors' best interests to be returned to mother's custody and denied mother's petitions for modification. It then found I.G. adoptable and terminated parental rights as to I.G. Mother appealed the denial of her petitions for modification and the termination of parental rights with respect to I.G.

## **II. DISCUSSION**

### **A. *Petitions for Modification***

Mother contends the juvenile court abused its discretion in denying her section 388 petitions. We conclude there was no abuse of discretion.

Section 388, subdivision (a) provides that a parent of a dependent child may petition the juvenile court "upon grounds of change of circumstance or new evidence . . . for a hearing to change, modify, or set aside any order of court previously made . . . ." Section 388 permits modification of a dependency order if a change of circumstance or new evidence is shown and if the proposed modification is in the best interests of the minor. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.)

The party petitioning for modification has the burden of proof by a preponderance of the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48.) A modification petition “is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) Here, the juvenile court found that, although mother had made some progress in treating her mental health issues, she had not substantially resolved the problems that had given rise to the removal of the minors, nor had she shown that return of J.A. and I.G. was in their best interests. We find no error.

Mother had made progress with her mental health treatment plan, but mother was not consistent in her appointment attendance or in her medication compliance. Her treatment plan required she attend therapy in the form of individual counseling twice a month, which she did not do. In fact, she did not attend even half of her required therapy sessions. And because of her failure to show at her psychiatry appointment, SCBH was unable to make any statement as to whether she was medication compliant. Even so, mother admitted she was supposed to take Latuda daily but missed doses as often as every other day. Moreover, despite Dr. McKellar’s conclusion that mother should be reassessed after she is stable on psychotropic medication, mother did not provide a new assessment regarding her mental health or ability to safely and effectively parent the minors, nor did she provide an opinion from a treating therapist or mental health professional suggesting her mental health had stabilized or even improved. Indeed, the *only* additional alleged change in circumstances beyond her sporadic appointment attendance and partial medication compliance was mother’s self-reported claim that she has not experienced the type of hallucination that came from within herself in six months or more.

This evidence was simply insufficient to make the necessary showing of a significant change in circumstances as required by section 388. Thus, we need not reach

the issue of the best interests of the minors and conclude the juvenile court did not err when it denied mother's petitions for modification. (§ 388, subd. (a).)

*B. Sibling Exception to Adoption*

Mother also contends the order terminating parental rights to I.G. must be reversed because the juvenile court erred in failing to find that the sibling relationship exception to adoption applied. The Agency contends mother forfeited her claim by failing to assert the applicability of the exception in the juvenile court. We agree with the Agency.

At the selection and implementation hearing (§ 366.26), the juvenile court must choose one of the alternative permanent plans provided by statute. The Legislature's preference is for adoption. If the juvenile court finds a minor adoptable and no circumstances would make the termination of parental rights detrimental to the minor, the juvenile court must terminate parental rights. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) The parent has the burden of establishing an exception to termination of parental rights. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

Contrary to mother's assertion, the juvenile court has no sua sponte duty to determine whether an exception to adoption applies. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.) Rather, the parent has the burden of affirmatively raising and proving that an exception applies. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 809; *In re C.F.* (2011) 193 Cal.App.4th 549, 553.)

Here, there was no mention of the applicability of the sibling relationship exception and nothing in the record that can be said to constitute an effort to place the sibling relationship exception at issue. Thus, mother has forfeited this argument by failing to assert it in the juvenile court. (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 291-292; *In re Erik P.* (2002) 104 Cal.App.4th 395, 403; *In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502.)



Mother's testimony that I.G., during a recent visit, seemed bonded to his siblings did not sufficiently raise the issue nor does it excuse mother's forfeiture.<sup>4</sup> The issue was not asserted in the juvenile court. Mother's failure to raise the exception prevented the Agency and the minor from having a full and fair opportunity to present evidence and litigate the issue at the hearing. We will not review the evidentiary support for the findings when the Agency and the minor were not provided a fair opportunity to present an adequate record in response. (See *People v. Adam* (1969) 1 Cal.App.3d 486, 489.)

### III. DISPOSITION

The orders of the juvenile court are affirmed.

/S/

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RENNER, J.

We concur:

/S/

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HULL, Acting P. J.

/S/

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MURRAY, J.

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<sup>4</sup> Mother also notes the maternal grandmother testified that D.D. was protective of J.A., as evidenced by D.D.'s statements that he wanted to go with J.A. if he moved back in with mother to protect J.A. from mother, and he would "kill his mother if she laid a hand on [J.A.]" Not only is this testimony insufficient to raise the sibling relationship exception to adoption, it is wholly irrelevant to the issue of I.G.'s bond with his siblings.